

4988

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 14, 2013

---

Introduced by M. of A. CRESPO -- read once and referred to the Committee  
on Education

AN ACT to amend the education law, in relation to parental involvement  
in the distribution of emergency contraception in the public schools

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,  
DO ENACT AS FOLLOWS:

1     Section 1. Legislative intent. The legislature hereby finds and  
2 declares that parents of minor children should be involved in their  
3 child's healthcare, especially when such healthcare involves sensitive  
4 matters that may impact their child's physical and emotional wellbeing  
5 for the remainder of their life. Healthcare services of this nature  
6 include the distribution of emergency contraception.  
7     The courts of this state have long recognized the freedom of parents  
8 to direct and control the education and upbringing of their children.  
9 PIERCE V. SOCIETY OF SISTERS, 268 U.S. 510 (1925). New York courts have  
10 determined this right to be "fundamental," and have stated that public  
11 schools are "prohibited from dispensing condoms to unemancipated, minor  
12 students without the prior consent of their parents or guardians, or  
13 without an opt-out provision..." ALFONSO V. FERNANDEZ, 195 A.D. 2D 46,  
14 60.  
15     The courts have determined that prior consent (an "opt-in" provision)  
16 is appropriate under the constitution of this state, and the legislature  
17 agrees, finding such a requirement best preserves the interests of  
18 parental involvement, provides for fully informed consent, and continues  
19 to allow for access to healthcare services by children in public  
20 schools.  
21     Further, the legislature finds that any consent made by parents on  
22 behalf of their minor child or any consent a child over the age of eigh-  
23 teen provides must be fully and adequately informed. Therefore, the  
24 legislature affirms that all information about the risks, side-effects

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD08781-01-3

1 and potential contraindications of the use of emergency contraception  
2 must be provided with any "opt-in" provision.

3 S 2. The education law is amended by adding a new section 907 to read  
4 as follows:

5 S 907. CONSENT TO THE PRESCRIPTION AND DISTRIBUTION OF EMERGENCY  
6 CONTRACEPTION. 1. NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, THE  
7 CONSENT OF A PARENT OR GUARDIAN MUST BE OBTAINED FOR THE PRESCRIPTION  
8 AND DISTRIBUTION OF EMERGENCY CONTRACEPTION, AS DEFINED IN PARAGRAPH (A)  
9 OF SUBDIVISION ONE OF SECTION TWO THOUSAND EIGHT HUNDRED FIVE-P OF THE  
10 PUBLIC HEALTH LAW, BY THE DIRECTOR OF SCHOOL HEALTH SERVICES OF EACH  
11 SCHOOL DISTRICT IN THIS STATE THAT IS REQUIRED TO PROVIDE SCHOOL HEALTH  
12 SERVICES, OR THE HEALTH DEPARTMENT OR AGENCY OTHERWISE RESPONSIBLE TO  
13 PROVIDE SUCH SERVICES, OR THE HEALTH CARE ADMINISTRATOR OF ANY PUBLIC  
14 SCHOOL IN THIS STATE.

15 2. THE DIRECTOR OF SCHOOL HEALTH SERVICES OF EACH SCHOOL DISTRICT IN  
16 THIS STATE THAT IS REQUIRED TO PROVIDE SCHOOL HEALTH SERVICES, OR THE  
17 HEALTH DEPARTMENT OR AGENCY OTHERWISE RESPONSIBLE TO PROVIDE SUCH  
18 SERVICES, OR THE HEALTH CARE ADMINISTRATOR OF ANY PUBLIC SCHOOL IN THIS  
19 STATE SHALL MAIL A LETTER, IN ENGLISH AND SPANISH, TO THE PARENT OR  
20 GUARDIAN OF ANY CHILD YET TO REACH THE AGE OF EIGHTEEN ON THE FIRST DAY  
21 THE SCHOOL YEAR COMMENCES IN THE YEAR FOLLOWING THE EFFECTIVE DATE OF  
22 THIS SECTION. SUCH LETTER MUST CONTAIN THE FOLLOWING PROVISIONS:

23 A. A TITLE IN BOLD LETTERING, AT THE TOP OF THE LETTER FOLLOWING THE  
24 LETTERHEAD BUT BEFORE THE SALUTATION, OF THE SAME SIZE AS THE TEXT OF  
25 THE LETTER, WHICH STATES "CONSENT FOR THE RECEIPT OF EMERGENCY CONTRA-  
26 CEPTION."

27 B. A BRIEF EXPLANATION IN THE TEXT OF THE LETTER THAT INFORMS THE  
28 RECIPIENT OF THE LETTER THAT HE OR SHE HAS THE RIGHT UNDER NEW YORK  
29 STATE LAW TO WITHHOLD OR PROVIDE CONSENT FOR THE DISTRIBUTION OF EMER-  
30 GENCY CONTRACEPTION TO HIS OR HER MINOR CHILD BY THE PUBLIC SCHOOLS.

31 C. A FULL LISTING OF ALL INDICATIONS AND USAGE, CONTRAINDICATIONS,  
32 ADVERSE REACTIONS AND WARNINGS AND PRECAUTIONS OF ANY FORM OF EMERGENCY  
33 CONTRACEPTION THAT THE HEALTH CARE PROVIDER AT THE PUBLIC SCHOOL MAY  
34 DISPENSE OR PRESCRIBE OVER THE COURSE OF THE YEAR AS SUCH INDICATIONS  
35 AND USAGE, CONTRAINDICATIONS, ADVERSE REACTIONS AND WARNINGS AND PRECAU-  
36 TIONS APPEAR IN THE UNITED STATES FOOD AND DRUG ADMINISTRATION DRUG  
37 APPROVAL DATABASE. IF THE INDICATIONS AND USAGE, CONTRAINDICATIONS,  
38 ADVERSE REACTIONS AND WARNINGS AND PRECAUTIONS OF A PARTICULAR FORM OF  
39 EMERGENCY CONTRACEPTION ARE NOT INCLUDED IN SUCH LETTER, THEY MAY NOT BE  
40 DISPENSED OR PRESCRIBED BY THE SCHOOL HEALTH CARE PROVIDER.

41 D. A PORTION OF THE LETTER, TO BE PLACED AT THE END OF THE LETTER  
42 FOLLOWING ALL OF THE ABOVE DESCRIBED PROVISIONS, ALLOWING THE PARENT OR  
43 GUARDIAN OF THE MINOR CHILD TO PROVIDE AFFIRMATIVE CONSENT FOR THE  
44 RECEIPT OF EMERGENCY CONTRACEPTION, MUST BE RETURNED TO THE SCHOOL  
45 HEALTH PROFESSIONAL OR OFFICE OF SCHOOL HEALTH, OR ANY SCHOOL OFFICIAL  
46 WHO SHALL FORWARD SUCH FORM TO THE SCHOOL HEALTH PROFESSIONAL OR OFFICE  
47 OF SCHOOL HEALTH. THIS PORTION OF THE LETTER SHALL READ AS FOLLOWS:

48 "I AM THE PARENT/GUARDIAN OF . I HAVE READ THE ABOVE  
49 LETTER AND INFORMATION CONCERNING THE PROVISION OF EMERGENCY CONTRA-  
50 CEPTION TO MY CHILD AND THE RISKS ASSOCIATED WITH PROVIDING MY CHILD  
51 WITH EMERGENCY CONTRACEPTION. I UNDERSTAND THESE RISKS AND WISH FOR  
52 MY CHILD TO BE PROVIDED WITH SUCH SERVICES AND MEDICATIONS SHOULD MY  
53 CHILD REQUEST THEM, WITHOUT FURTHER APPROVAL REQUIRED OF ME.  
54 DATE: SIGNATURE OF PARENT/GUARDIAN: ."

55 3. ANY CONSENT DERIVED FROM THE LETTER DESCRIBED IN THIS SECTION SHALL  
56 BE VALID ONLY UNTIL THE DAY PRIOR TO THE FIRST DAY OF THE SUBSEQUENT

1 SCHOOL YEAR FOLLOWING THE YEAR IN WHICH THE LETTER WAS SENT TO A CHILD'S  
2 PARENT OR GUARDIAN.

3 4. FULL WRITTEN AND ORAL INFORMED CONSENT MUST BE SPECIFICALLY AND  
4 PERSONALLY PROVIDED BY THE LICENSED HEALTH CARE PROFESSIONAL PRESCRIBING  
5 THE EMERGENCY CONTRACEPTION IN THE PUBLIC SCHOOL. THIS INFORMED CONSENT  
6 MUST INCLUDE THE INDICATIONS AND USAGE, CONTRAINDICATIONS, ADVERSE  
7 REACTIONS AND WARNINGS AND PRECAUTIONS AS THEY APPEAR IN THE UNITED  
8 STATES FOOD AND DRUG ADMINISTRATION DRUG APPROVAL DATABASE. ANY LICENSED  
9 HEALTH CARE PROFESSIONAL WHO PRESCRIBES EMERGENCY CONTRACEPTION AFTER  
10 RECEIVING CONSENT THAT DOES NOT INCLUDE THE INDICATIONS AND USAGE,  
11 CONTRAINDICATIONS, ADVERSE REACTIONS AND WARNINGS AND PRECAUTIONS AS  
12 THEY APPEAR IN THE UNITED STATES FOOD AND DRUG ADMINISTRATION DRUG  
13 APPROVAL DATABASE SHALL BE DEEMED TO HAVE WILLFULLY VIOLATED THIS  
14 SECTION.

15 5. NO FORM OF EMERGENCY CONTRACEPTION MAY BE DISPENSED TO ANY MINOR  
16 CHILD BY ANY PUBLIC SCHOOL HEALTH PROFESSIONAL OR OFFICE OF SCHOOL  
17 HEALTH UNTIL SUCH OFFICE OR PROFESSIONAL HAS RECEIVED AFFIRMATIVE  
18 CONSENT FOR SUCH SERVICES AS PRESCRIBED IN SUBDIVISION ONE OF THIS  
19 SECTION, AND ONLY AFTER A SPECIFIC REVIEW OF THE CHILD'S MEDICAL CONDI-  
20 TION AND HISTORY BY THE LICENSED HEALTH CARE PROVIDER PROVIDING SUCH  
21 SERVICE. A RECORD OF THIS SPECIFIC REVIEW AND MEDICAL CONDITION OF THE  
22 CHILD MUST BE CREATED BY THE LICENSED HEALTH CARE PROFESSIONAL CONTEMPO-  
23 RANEOUSLY WITH DISTRIBUTION OF EMERGENCY CONTRACEPTION TO THE CHILD. ANY  
24 LICENSED HEALTH CARE PROFESSIONAL THAT FAILS TO CREATE SUCH RECORD SHALL  
25 BE DEEMED TO HAVE WILLFULLY VIOLATED THIS SECTION.

26 6. ALL LICENSED HEALTH CARE PROFESSIONALS SHALL RECORD, AS REQUIRED IN  
27 SUBDIVISION FIVE OF THIS SECTION AND PURSUANT TO SECTION FOUR HUNDRED  
28 THIRTEEN OF THE SOCIAL SERVICES LAW, ANY AND ALL EVIDENCE INDICATIVE OF  
29 ABUSE OR MALTREATMENT AS DEFINED IN SECTION FOUR HUNDRED TWELVE OF THE  
30 SOCIAL SERVICES LAW. ANY VIOLATION OF THIS SUBDIVISION SHALL BE DEEMED A  
31 WILLFUL VIOLATION OF SECTION FOUR HUNDRED TWENTY OF THE SOCIAL SERVICES  
32 LAW.

33 7. THE DIRECTOR OF SCHOOL HEALTH SERVICES OF EACH SCHOOL DISTRICT IN  
34 THIS STATE THAT IS REQUIRED TO PROVIDE SCHOOL HEALTH SERVICES, OR THE  
35 HEALTH DEPARTMENT OR AGENCY OTHERWISE RESPONSIBLE TO PROVIDE SUCH  
36 SERVICES, OR THE HEALTH CARE ADMINISTRATOR OF ANY PUBLIC SCHOOL IN THIS  
37 STATE, SHALL MAINTAIN THE RECORDS DESCRIBED IN SUBDIVISION FIVE OF THIS  
38 SECTION, IN WHATEVER MEDIUM THEY WERE CREATED, FOR A MINIMUM OF FOUR  
39 YEARS FOLLOWING THE CHILD'S LAST DAY OF ATTENDANCE AT THE SCHOOL.

40 8. NO LICENSED HEALTH CARE PROFESSIONAL COVERED BY THIS SECTION SHALL  
41 PRESCRIBE ANY FORM OF EMERGENCY CONTRACEPTION FOR USE BY A CHILD OTHER  
42 THAN THE USE THAT IS DESCRIBED AND APPROVED BY THE UNITED STATES FOOD  
43 AND DRUG ADMINISTRATION. ANY LICENSED HEALTH CARE PROFESSIONAL FOUND TO  
44 HAVE PRESCRIBED EMERGENCY CONTRACEPTION TO A CHILD FOR USE OTHER THAN  
45 THAT AS DESCRIBED AND APPROVED BY THE UNITED STATES FOOD AND DRUG ADMIN-  
46 ISTRATION SHALL BE DEEMED TO HAVE WILLFULLY VIOLATED THIS SECTION.

47 S 3. Section 6509 of the education law is amended by adding a new  
48 subdivision 15 to read as follows:

49 (15) A WILLFUL VIOLATION BY A LICENSEE OF SECTION NINE HUNDRED SEVEN  
50 OF THIS CHAPTER.

51 S 4. Section 6530 of the education law is amended by adding a new  
52 subdivision 50 to read as follows:

53 50. A WILLFUL VIOLATION BY A LICENSEE OF SECTION NINE HUNDRED SEVEN OF  
54 THIS TITLE.

55 S 5. This act shall take effect immediately.